IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 3RD OCTOBER 2006 / 11TH ASWINA 1928

MFA.No. 1471 of 1997()

OPMV.1126/1990 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THRISSUR

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APPELLANT:

NATIONAL INSURANCE COM.LTD., THRISSUR,
NOW REPRESENTED BY ITS ASSISTANT MANAGER,
KOCHI REGIONAL OFFICE, M.G.ROAD, KOCHI-682 035.

BY ADV. SRI.MATHEWS JACOB

RESPONDENTS:

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1. THANKA, W/O.SUBRAN, KOLLULI HOUSE,
KIZHAKKUMPATTUKARA, THRISSUR.

2. MALLIKA, D/O.SUBRAN, DO. DO.

3. AMBIKA, D/O. DO. DO.

4. SUMESH, S/O. DO. DO.

5. K.I.CHIKKORU, KOLLANNUR HOUSE,
AYYANTHOLE, THRISSUR.

6. K.S.PAVITHRAN, S/O.SANKARAN, KUNDOLI HOUSE,
S.N.PARK, POOTHOLE, THRISSUR.

(MINOR RESPONDENT NO.4 IS REPRESENTED BY HIS MOTHER
1ST RESPONDENT)

R1 TO R4 BY ADVS.M/S. SRI.K.LAKSHMINARAYANAN &
SMT.SATHYA SHREEPRIYA.

R6 BY ADV.SRI. P.VIJAYA BHANU

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 03/10/2006, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

Thottathil B. Radhakrishnan, J.

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M.F.A.No.1471 of 1997

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Dated this the 3rd day of October, 2006.

JUDGMENT

This appeal is by an insurance company.

2. A motor cycle belonging to the fifth respondent met with an accident. The sixth respondent was riding the motor cycle at the time of the accident. The original claimant, who is now no more, was a pedestrian. The compensation was directed to be paid by the appellant, who was the third respondent before the Tribunal, on the premise that the vehicle was covered by a valid policy at the time of insurance.

3. The accident occurred at 10.45 a.m. on 12-3-1990. The insurance policy was availed at 2.20 p.m. on that day. These are matters on record. By the decision of the Apex Court in **National Insurance Co.Ltd. v. Jikubhai Nathuji Dabhi (Smt) and others (1997 (1) S.C.C. 66)**, a policy issued during a particular day relates back to the commencement of that day, that is,

to the previous midnight. Later on, the Apex Court clarified the judgment in **New India Assurance Co.Ltd. v. Ram Dayal (1990 (1) K.L.T. 817 (S.C.)** and stated that if, in a policy, the time of commencement of insurance is specifically shown, then the policy of insurance will be applicable only from that point of time. Applying the said principle, the vehicle involved in the accident did not have a valid insurance at 10.45 a.m. on 12-3-1990, when the accident happened. It was covered by a valid policy only from 2.20 p.m. that day. The result is that the insurer cannot be made liable to satisfy the impugned award. It is stated that as a condition for granting stay at the time of admission, the appellant insurer had deposited 50% of the amount due under the award. The learned counsel for the claimants submitted that a portion of same has been withdrawn by the claimants. In the aforesaid circumstances, on finding that the insurer is not liable to satisfy the award, it is directed that if the claimants have already withdrawn any portion of the amount deposited by the insurer before the Tribunal, the claimants will not be liable to repay the amount to

the appellant insurer and the appellant insurer will be entitled to reimbursement of such amount from the fifth respondent registered owner in execution of the impugned award as modified by this appellate award. The appeal is allowed to the above extent. There will be no order as to costs. It is also directed that in view of this appellate award, the claimants will be entitled to recover the award amount from respondents 1 and 2 before the Tribunal (respondents 5 and 6 herein) jointly and severally.

Thottathil B.Radhakrishnan,
Judge.

sl.

Thottathil B. Radhakrishnan, J.

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M.F.A.No.1471 of 1997

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JUDGMENT

Dated:3-10-2006